

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EVAN GEFNER and IVAN BABSIN on behalf of
themselves, all others similarly situated, and the
general public

Plaintiffs,

vs.

THE COCA-COLA COMPANY

Defendant.

Civil Action No. 17-cv-7952

**NOTICE OF MOTION AND
MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT**

TO THE COURT AND ALL PARTIES AND COUNSEL:

PLEASE TAKE NOTICE that Defendant The Coca-Cola Company (“Coca-Cola”) hereby moves this Court before the Honorable Louis L. Stanton, United States District Judge for the Southern District of New York, United States Courthouse, 500 Pearl Street, Courtroom 21C, New York, NY 10007, at a time and date to be designated by the Court, for an order dismissing Plaintiffs’ First Amended Complaint in its entirety and with prejudice.

This motion is made pursuant to Federal Rules of Civil Procedure 12(b)(6), and is based on the following grounds: (1) Plaintiffs’ claims are expressly preempted by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq*, because Plaintiffs seek to impose requirements for food labeling that are not identical to federal requirements; (2) Plaintiffs’ statutory consumer protection claims are barred as a matter of law by those statutes’ safe harbor provisions, which provide a “complete defense” to claims challenging conduct that “complies with the rules and regulations” of any federal agency, including the FDA; (3) Plaintiffs have failed to state a plausible claim of deception because no reasonable consumer would be deceived by Diet Coke’s brand name.

This motion is based on this Notice of Motion and Motion to Dismiss, the attached Memorandum of Law and accompanying declarations, the First Amended Complaint and all other pleadings on file in this matter, and such other written and oral argument as may be presented to the Court.

Dated: May 21, 2018

By: /s/ Steven A. Zalesin
Steven A. Zalesin
sazalesin@pbwt.com
Catherine A. Williams
cawilliams@pbwt.com
PATTERSON BELKNAP WEBB &
TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
Telephone (212) 336-2110
Facsimile (212) 336-2111

Attorneys for The Coca-Cola Company